

Senate File 433 - Introduced

SENATE FILE _____
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 1142)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the classification and assessment of
2 violations in health care facilities and assisted living
3 programs and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1570SV 83
6 jr/nh/5

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1 1 Section 1. NEW SECTION. 135C.16A INSPECTORS == CONFLICTS
1 2 OF INTEREST.
1 3 1. Any of the following circumstances disqualifies an
1 4 inspector from inspecting a particular health care facility
1 5 under this chapter:
1 6 a. The inspector currently works or, within the past two
1 7 years, has worked as an employee or employment agency staff at
1 8 the health care facility, or as an officer, consultant, or
1 9 agent for the health care facility to be inspected.
1 10 b. The inspector has any financial interest or any
1 11 ownership interest in the facility. For purposes of this
1 12 paragraph, indirect ownership, such as through a broad-based
1 13 mutual fund, does not constitute financial or ownership
1 14 interest.
1 15 c. The inspector has an immediate family member who has a
1 16 relationship with the facility as described in paragraph "a"
1 17 or "b".
1 18 d. The inspector has an immediate family member who
1 19 currently resides in the facility.
1 20 2. For purposes of this section, "immediate family member"
1 21 means the same as set forth in 42 C.F.R. } 488.302, and
1 22 includes a husband or wife; natural or adoptive parent, child,
1 23 or sibling; stepparent, stepchild, or stepsibling;
1 24 father-in-law, mother-in-law, son-in-law, daughter-in-law,
1 25 brother-in-law, or sister-in-law; or grandparent or
1 26 grandchild.
1 27 Sec. 2. NEW SECTION. 135C.35 TRAINING OF INSPECTORS.
1 28 1. Subject to the availability of funding, all nursing
1 29 facility inspectors shall receive twelve hours of annual
1 30 continuing education in gerontology, wound care, dementia,
1 31 falls, or a combination of these subjects.
1 32 2. An inspector shall not be personally liable for
1 33 financing the training required under subsection 1.
1 34 3. The department shall consult with the collective
1 35 bargaining representative of the inspector in regard to the
2 1 training required under this section.
2 2 Sec. 3. Section 135C.36, Code 2009, is amended by adding
2 3 the following new subsections:
2 4 NEW SUBSECTION. 4. A licensee shall be given the
2 5 opportunity to correct any deficient practice prior to any
2 6 penalties being imposed pursuant to subsection 2 or 3, except
2 7 for those penalties arising pursuant to 481 IAC } 57.39,
2 8 58.43, 62.23, subrules 23 through 25, 63.37, 64.33, 65.15, or
2 9 65.25, subrules 3 through 5, or the successor to any of such
2 10 rules.
2 11 NEW SUBSECTION. 5. Any state penalty, including a fine or
2 12 citation, issued as a result of the federal survey and
2 13 certification process shall be dismissed if the corresponding
2 14 federal deficiency or citation is dismissed or removed.

2 15 NEW SUBSECTION. 6. If a facility self-identifies a
2 16 deficient practice prior to the on-site visit inspection,
2 17 there has been no complaint filed with the department related
2 18 to that specific deficient practice, and the facility corrects
2 19 such practice prior to completion of an inspection, no
2 20 citation shall be issued or fine assessed pursuant to
2 21 subsection 2 or 3 except for those penalties arising pursuant
2 22 to 481 IAC } 57.39, 58.43, 62.23, subrules 23 through 25,
2 23 63.37, 64.33, 65.15, or 65.25, subrules 3 through 5, or the
2 24 successor to any of such rules.

2 25 Sec. 4. Section 135C.40, subsection 1, Code 2009, is
2 26 amended to read as follows:

2 27 1. If the director determines, based on the findings of an
2 28 inspection or investigation of a health care facility, that
2 29 the facility is in violation of this chapter or rules adopted
2 30 under this chapter, the director within ~~five~~ ten working days
2 31 after ~~making the determination, may~~ completion of an on-site
2 32 inspection, may issue a written citation statement of
2 33 deficiency to the facility. The citation statement of
2 34 deficiency shall be served upon the facility personally, by
2 35 electronic mail, or by certified mail, except that a citation
3 1 statement of deficiency for a Class III violation may be sent
3 2 by ordinary mail. Each citation statement of deficiency shall
3 3 specifically describe the nature of the violation, identifying
3 4 the Code section or subsection or the rule or standard
3 5 violated, and the classification of the violation under
3 6 section 135C.36. Where appropriate, the citation statement of
3 7 deficiency shall also state the period of time allowed for
3 8 correction of the violation, which shall in each case be the
3 9 shortest period of time the department deems feasible.
3 10 Failure to correct a violation within the time specified,
3 11 unless the licensee shows that the failure was due to
3 12 circumstances beyond the licensee's control, shall subject the
3 13 facility to a further penalty of fifty dollars for each day
3 14 that the violation continues after the time specified for
3 15 correction.

3 16 a. If a facility licensed under this chapter is subject to
3 17 or will be subject to denial of payment including payment for
3 18 Medicare or medical assistance under chapter 249A, or denial
3 19 of payment for all new admissions pursuant to 42 C.F.R. }
3 20 488.417, and submits a plan of correction relating to a
3 21 statement of deficiencies or a response to a citation issued
3 22 under rules adopted by the department and the department
3 23 elects to conduct an on-site revisit inspection, the
3 24 department shall commence the revisit inspection within the
3 25 shortest time feasible of the date that the plan of correction
3 26 is received, or the date specified within the plan of
3 27 correction alleging compliance, whichever is later.

3 28 b. If the department recommends the issuance of federal
3 29 remedies pursuant to 42 C.F.R. } 488.406(a)(2) or (a)(3),
3 30 relating to an inspection conducted by the department, the
3 31 department shall issue the statement of deficiencies within
3 32 twenty-four hours of the date that the centers for Medicare
3 33 and Medicaid services of the United States department of
3 34 health and human services was notified of the recommendation
3 35 for the imposition of remedies.

4 1 c. The facility shall be provided an exit interview at the
4 2 conclusion of an inspection and the facility representative
4 3 shall be informed of all issues and areas of concern related
4 4 to the deficient practices. The department may conduct the
4 5 exit interview either in person or by telephone, and a second
4 6 exit interview shall be provided if any additional issues or
4 7 areas of concern are identified. The facility shall be
4 8 provided two working days from the date of the exit interview
4 9 to submit additional or rebuttal information to the
4 10 department.

4 11 Sec. 5. Section 135C.41, subsection 2, Code 2009, is
4 12 amended to read as follows:

4 13 2. Notify the director that the facility desires to
4 14 contest the citation and, in the case of citations for Class
4 15 I, Class II, or Class III violations, request an informal
4 16 conference with a representative of the department.

4 17 Sec. 6. NEW SECTION. 135C.43A REDUCTION OF PENALTY
4 18 AMOUNT.

4 19 If a facility has been assessed a penalty, does not request
4 20 a formal hearing pursuant to section 135C.43 or withdraws its
4 21 request for a formal hearing within thirty days of the date
4 22 that the penalty was assessed, and the penalty is paid within
4 23 thirty days of the receipt of notice of service, the amount of
4 24 the penalty shall be reduced by thirty-five percent. The
4 25 citation which includes the civil penalty shall include a

4 26 statement to this effect.

4 27 Sec. 7. NEW SECTION. 135C.44A DOUBLE FINES FOR
4 28 INTENTIONAL VIOLATIONS.

4 29 The penalties authorized by section 135C.36 shall be
4 30 doubled for each Class I violation when the violation is due
4 31 to an intentional act by the facility in violation of a
4 32 provision of this chapter or a rule of the department.

4 33 Sec. 8. Section 231C.2, Code 2009, is amended by adding
4 34 the following new subsections:

4 35 NEW SUBSECTION. 10A. "Significant change" means a major
5 1 decline or improvement in the tenant's status which does not
5 2 normally resolve itself without further interventions by staff
5 3 or by implementing standard disease-related clinical
5 4 interventions that have an impact on more than one area of the
5 5 tenant's mental, physical, or functional health status.

5 6 NEW SUBSECTION. 10B. "Substantial compliance" means a
5 7 level of compliance with this chapter and rules adopted
5 8 pursuant to this chapter such that any identified
5 9 insufficiencies pose no greater risk to tenant health or
5 10 safety than the potential for causing minimal harm.
5 11 "Substantial compliance" constitutes compliance with the rules
5 12 of this chapter.

5 13 Sec. 9. Section 231C.3, subsection 1, paragraph c, Code
5 14 2009, is amended to read as follows:

5 15 c. Standards for tenant evaluation or assessment, and
5 16 service plans, which may vary in accordance with the nature of
5 17 the services provided or the status of the tenant. When a
5 18 tenant needs personal care or health-related care, the service
5 19 plan shall be updated within thirty days of occupancy and as
5 20 needed with significant change, but not less than annually.

5 21 Sec. 10. NEW SECTION. 231C.3A MONITORING == CONFLICTS OF
5 22 INTEREST.

5 23 1. Any of the following circumstances disqualifies a
5 24 monitor from inspecting a particular assisted living program
5 25 under this chapter:

5 26 a. The monitor currently works or, within the past two
5 27 years, has worked as an employee or employment agency staff at
5 28 the program, or as an officer, consultant, or agent for the
5 29 program to be monitored.

5 30 b. The monitor has any financial interest or any ownership
5 31 interest in the program. For purposes of this paragraph,
5 32 indirect ownership, such as through a broad-based mutual fund,
5 33 does not constitute financial or ownership interest.

5 34 c. The monitor has an immediate family member who has a
5 35 relationship with the program as described in paragraph "a" or
6 1 "b".

6 2 d. The monitor has an immediate family member who
6 3 currently resides in the program.

6 4 2. For purposes of this section, "immediate family member"
6 5 means a husband or wife; natural or adoptive parent, child, or
6 6 sibling; stepparent, stepchild, or stepsibling; father-in-law,
6 7 mother-in-law, son-in-law, daughter-in-law, brother-in-law, or
6 8 sister-in-law; or grandparent or grandchild.

6 9 Sec. 11. Section 231C.10, subsection 1, paragraph f, Code
6 10 2009, is amended by striking the paragraph and inserting in
6 11 lieu thereof the following:

6 12 f. Failure to protect tenants from dependent adult abuse
6 13 as defined in section 235E.1.

6 14 Sec. 12. Section 231C.10, subsection 2, Code 2009, is
6 15 amended to read as follows:

6 16 2. The department may as an alternative to denial,
6 17 suspension, or revocation conditionally issue or continue a
6 18 certificate dependent upon the performance by the assisted
6 19 living program of reasonable conditions within a reasonable
6 20 period of time as set by the department so as to permit the
6 21 program to commence or continue the operation of the program
6 22 pending ~~full~~ substantial compliance with this chapter or the
6 23 rules adopted pursuant to this chapter. If the assisted
6 24 living program does not make diligent efforts to comply with
6 25 the conditions prescribed, the department may, under the
6 26 proceedings prescribed by this chapter, suspend or revoke the
6 27 certificate. An assisted living program shall not be operated
6 28 on a conditional certificate for more than one year.

6 29 Sec. 13. Section 231C.12, Code 2009, is amended to read as
6 30 follows:

6 31 231C.12 DEPARTMENT NOTIFIED OF CASUALTIES.

6 32 The department shall be notified ~~within twenty-four hours~~
6 33 no later than the next working day, by the most expeditious
6 34 means available, of any accident causing ~~substantial~~ major
6 35 injury or death, and any substantial fire or natural or other
7 1 disaster occurring at or near an assisted living program.

7 2 Sec. 14. Section 231C.14, Code 2009, is amended by adding
7 3 the following new subsection:

7 4 NEW SUBSECTION. 4. If a program assessed a penalty does
7 5 not request a formal hearing pursuant to chapter 17A or
7 6 withdraws its request for a formal hearing within thirty days
7 7 of the date the penalty was assessed, the penalty shall be
7 8 reduced by thirty-five percent, if the penalty is paid within
7 9 thirty days of the issuance of a demand letter issued by the
7 10 department. The demand letter, which includes the civil
7 11 penalty, shall include a statement to this effect.

7 12 Sec. 15. NEW SECTION. 231C.20 LIMITATION ON PENALTIES.
7 13 The department shall not impose duplicate civil penalties
7 14 for the same set of facts and circumstances. All monitoring
7 15 revisits by the department shall review the program
7 16 prospectively from the date of the plan of correction to
7 17 determine compliance.

7 18 EXPLANATION

7 19 This bill relates to health care facilities and assisted
7 20 living programs, including violations, penalties, and
7 21 inspections applicable to such facilities and programs. Under
7 22 current law, health care facilities are inspected by the
7 23 department of inspections and appeals.

7 24 The bill creates new provisions specifying conflicts of
7 25 interest that disqualify an inspector from inspecting a
7 26 particular health care facility or program. These include
7 27 prior employment with the facility under inspection, a
7 28 financial interest in the facility, or a family member with
7 29 such interests or who resides in the facility. The bill also
7 30 requires specialized training for inspectors of health care
7 31 facilities. Inspectors of health care facilities will receive
7 32 12 hours of annual continuing education in gerontology, wound
7 33 care, dementia, and falls. The inspector cannot be required
7 34 to pay for the training.

7 35 The bill provides health care facilities with an
8 1 opportunity to correct any deficient practice prior to any
8 2 penalties being imposed except for those penalties arising
8 3 from abuse.

8 4 The bill requires that any state penalty issued against a
8 5 health care facility as a result of the federal survey and
8 6 certification process be dismissed if the corresponding
8 7 federal deficiency or citation is dismissed or removed.

8 8 The bill provides that: (1) if a health care facility
8 9 self-identifies a deficient practice prior to an on-site
8 10 inspection, (2) there has been no complaint filed related to
8 11 that specific deficient practice, and (3) the facility
8 12 corrects the practice prior to completion of an inspection, no
8 13 citation shall be issued or fine assessed except for those
8 14 penalties arising from abuse.

8 15 The bill revises the timeframes for health care facility
8 16 inspections, revisits after an inspection, and the conduct of
8 17 exit interviews.

8 18 The bill provides for a 35 percent reduction of a penalty
8 19 for a health care facility or assisted living program if: (1)
8 20 the facility or program has been assessed a penalty, (2) does
8 21 not request a formal hearing or withdraws its request for a
8 22 formal hearing within 30 days of the date that the penalty was
8 23 assessed, and (3) the penalty is paid within 30 days of the
8 24 receipt of notice or service. Penalties are doubled for each
8 25 class I violation when the violation is due to an intentional
8 26 act by the facility.

8 27 Relating specifically to assisted living programs, the bill
8 28 adds definitions for the terms "significant change" and
8 29 "substantial compliance". The bill revises a provision
8 30 regulating the time period within which a program must report
8 31 an accident causing major injury or death to the department.
8 32 The bill also prohibits duplicate civil penalties against a
8 33 program for the same set of facts and circumstances.

8 34 LSB 1570SV 83

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